

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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KYLE JOSEPH LONGACRE, #626648

Petitioner,

Case No. 2:12-cv-483

v.

Honorable R. Allan Edgar

KEN TRIBLEY,

Respondent.

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**MEMORANDUM AND ORDER**

U.S. Magistrate Judge Greeley entered a Report and Recommendation (“R&R”) recommending that Petitioner’s § 2254 habeas petition be dismissed with prejudice. Doc. No. 10. Petitioner has filed objections to the R&R. Doc. No. 11, 14. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Magistrate Judge Greeley recommended that Petitioner’s petition be denied because it is barred by the one-year statute of limitations. In his objections, Petitioner asserts that his sentence was invalid and was the result of plain error, and that he therefore has met the burden of establishing entitlement to relief under Mich. Ct. R. 6.508(D). Since this is a federal § 2254 habeas proceeding, that argument is irrelevant. Petitioner also asserts that he is innocent. The Sixth Circuit has held that a habeas petitioner who demonstrates a credible claim of actual innocence based on new evidence may, in exceptional

circumstances, be entitled to equitable tolling of habeas limitations. See *McCray v. Vasbinder*, 499 F.3d 568, 577 (6th Cir. 2007); *Souter v. Jones*, 395 F.3d 577, 597-98 (6th Cir. 2005). Petitioner has made no such showing.

Petitioner's objections to the R&R [Doc. No. 11, 14] are without merit and are DENIED. Magistrate Judge Greeley's R&R [Doc. No. 10] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). The petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If Petitioner files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484. Reasonable jurists could not find that this decision to dismiss Petitioner's claims is debatable or wrong.

A Judgment consistent with this Memorandum and Order will be entered.

SO ORDERED.

Dated: 4/3/2014

/s/ R. Allan Edgar  
R. Allan Edgar  
United States District Judge